

GCP #10 CASH COLLATERAL GUIDELINES

A. Any consensual cash collateral order must contain the following provisions:

1. A statement that
 - a. there has been compliance with service requirements;
 - b. the secured creditor asserts priority lien in the cash collateral, together with a specific identification of the assets that are generating or will generate cash collateral (i.e. cash on hand, proceeds of inventory sales, etc.), and the amount of the indebtedness allegedly secured;
 - c. the debtor has an immediate need for the use of cash collateral to preserve its assets, fund its business operation, purchase inventory, etc.;
 - d. debtor's reaffirmation of existing terms and conditions of existing financing documents with secured creditors.
2. Relief:
 - a. Grant and define adequate protection to Secured Creditor (and its successors and assigns) pursuant to §361 and §363, including monthly adequate protection payments (if appropriate), subject to later allocation as to fees, interest and principal contingent upon results of §506(a) motions, if any.
 - b. Grant Secured Creditor replacement liens in postpetition assets to the same extent and priority as existed at the date of bankruptcy.
 - c. Grant Secured Creditor super-priority administrative claim to the extent of the diminution in the value of the secured creditor's collateral after the date of bankruptcy.
 - d. Provide for establishment of a segregated DIP account into which cash collateral should be deposited.
 - e. Restrict use of cash collateral to pay specified categories of operating expenses, per budgets to be attached to Order or subsequently filed with the Court.
 - f. Require that Debtor maintain insurance.
 - g. Require submission of periodic (weekly, bi-weekly, monthly) reports regarding use of cash, aging of accounts receivable, etc.
 - h. Equality of treatment for carve-outs as between professionals for the Debtor and professionals for the Committee of Unsecured Creditors (or other committees) and other postpetition creditors.
 - i. Provide that the prepetition liens of the Secured Creditor shall be continued postpetition as to both prepetition and postpetition assets, but the value of the Secured Creditor's liens shall not be greater postpetition than the value thereof at the time of the filing of the bankruptcy petition initiating the case, plus accruals and advances thereafter, and minus payments to the Secured Creditor thereafter. No additional financing statements or mortgages need be filed to perfect such postpetition liens and security interest (but may be filed if the Secured Creditor chooses).

- j. Identify the time period to which the Order is applicable and provide that even if authorization to use cash collateral expires, adequate protection/ liens will continue to be effective until/unless otherwise modified by the Court.
- k. Set final hearing date and provide that summaries of documents relied upon by Secured Creditor in asserting perfected security interest be filed with the Clerk by such date. The summaries shall comply with the Court's Electronic Case Filing Procedures.

B. The following provisions should not be included

- 1. Stipulations as to the perfection, validity or priority of secured claims that are binding on any party other than the debtor, without affording other interested parties a reasonable time to challenge same.
- 2. Stipulations which reduce the time period within which parties in interest can challenge the perfection, validity, priority or amount of secured claims to (i) less than ninety (90) days from the engagement of counsel for the Committee of Unsecured Creditors or, if no counsel or no Committee is appointed, (ii) less than 120 days after the case is filed.
- 3. In cases where the Secured Creditor asserts liens on accounts receivable pursuant to asset based revolving credit facilities, provisions which recharacterize the "use of cash collateral" into "post-petition advances," without regard to whether the so called "post-petition advance" is a new loan, or the use of a prepetition receivable.
- 4. Provisions which release potential claims or causes of action by the estate against the lender.
- 5. Provisions which grant automatic relief from stay upon a material default under the cash collateral order (but secured creditor's entitlement to an expedited hearing in the event of a material default could be recognized).
- 6. Provisions which grant cross collateralization on unencumbered assets, absent extraordinary circumstances.